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SJC-12443

ANGEL LUIS ALVAREZ vs. COMMONWEALTH.

August 22, 2018.

Moot Question. Practice, Civil, Moot case.

The defendant, Angel Alvarez, appeals from the order denying his motion for a stay of execution of his sentence by a single justice of the county court. We dismiss the appeal as moot.

A Superior Court jury found the defendant guilty on indictments charging three counts of rape of a child and one count of indecent assault and battery upon a child in November, 2016. The defendant timely appealed, and this court granted direct appellate review on September 14, 2017. On September 20, 2017, the defendant filed a motion in the Superior Court to stay execution of his sentence, which the judge denied. The defendant then re-filed his motion to stay execution of his sentence as part of his pending appeal before this court. On November 21, 2017, a single justice of this court denied the defendant's motion to stay execution of his sentence without a hearing, and this appeal followed.

Because our decision in Commonwealth v. Alvarez, 480 Mass. (2018), vacates the defendant's convictions and remands the case to the Superior Court for a new trial, the defendant's appeal from the order denying the motion to stay execution of the sentence is dismissed as moot. The issue of pretrial release will be for the trial judge to determine.

So ordered.

David Rassoul Rangaviz, Committee for Public Counsel
Services, for the defendant.

Nathaniel R. Beaudoin, Assistant District Attorney, for the
Commonwealth.